

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

NOV 22 1996

In the Matter of )  
 )  
 Advanced Television Systems )  
 and Their Impact Upon the ) MM Docket No. 87-268  
 Existing Television Broadcast )  
 Service )

To: The Commission

**COMMENTS OF EMPIRE BROADCASTING, L.L.C.**

Empire Broadcasting, L.L.C. ("Empire"), by its attorneys, hereby submits these Comments in response to the Commission's Sixth Further Notice of Proposed Rule Making ("Sixth FNPRM"), FCC 96-317, released August 14, 1996, 61 Fed. Reg. 43209 (August 21, 1996), in the above-captioned proceeding.

Empire is the licensee of low power television station W17BM, New York, New York. W17BM transmits from the Empire State Building in New York City, serving over nine million persons in over three million households in the New York region.<sup>1</sup> W17BM operates 24 hours per day, seven days per week and provides the only broadcast source of television programming of its type in the New York City area,<sup>2</sup>

<sup>1</sup> See Engineering Statement of Kevin T. Fisher attached as Exhibit A (the "Engineering Statement").

<sup>2</sup> W17BM's programming is predominately in the Korean language. The station has also broadcast programming in other foreign languages from time to time.

an area well known for its diversity with significant foreign language-speaking populations.<sup>3</sup> W17BM's programming includes a substantial amount of locally-produced programming, including local news and news magazine programming supported by a news department.

Empire opposes the Commission's proposals in the Sixth FNPRM to the extent that they do not adequately address the potential displacement of low power television stations and the resulting loss of the unique and diverse services which stations such as W17BM provide to the public. As shown in the Engineering Statement, the Commission's proposal to allot Channel 17 to Garden City, New York for digital television ("DTV") use by television station WLIW would conflict with W17BM's existing use of Channel 17 at New York City. Were Channel 17 to be so allotted for DTV use, it would cause irreparable harm to the service of W17BM. W17BM would, at a minimum, be subject to displacement to another channel, and very well might be forced to discontinue operation entirely.<sup>4</sup>

Being charged under law with regulating in the public interest, the Commission simply must squarely address the plight of low power television stations such as W17BM.<sup>5</sup> Loss of service from

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<sup>3</sup> The coverage of W17BM includes, for example, an Asian population of almost 600,000. Id.

<sup>4</sup> Because the spectrum within the New York City region is among the most congested in the nation, W17BM would very likely be unable to modify operation to another channel, let alone replicate its present service.

<sup>5</sup> The Commission must reconsider its "core spectrum" approach, which as presently constituted inordinately impacts and would in many cases eliminate the services now being provided by low power television stations. Moreover, in addition to liberal displacement

such stations would be counter to the Commission's fundamental goal of diversity in broadcast television services and would deny the public the programming uniquely provided by them, in derogation of the public interest.

As further detailed in the Engineering Statement, Empire objects to the allotment of Channel 17 to Garden City, New York for DTV use unless provision is made for W17BM to continue operation, on channel 17 or upon another channel, with a service area substantially similar to that which W17BM presently provides.

Respectfully submitted,

**EMPIRE BROADCASTING, L.L.C.**

By:

  
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November 22, 1996

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relief for low power television stations, the Commission should also adopt means for more efficient use of the spectrum. For example, the present interference protection rules, which were developed in an era of now-outdated technology, should be updated properly to take into account advances in transmission system technologies, computerized interference prediction models and improvements in receiver performance. Such updating and refinement of the Commission's rules will afford greater flexibility in accommodating the needs of low power television stations.

EXHIBIT A

SMITH AND FISHER

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ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of EMPIRE BROADCASTING, LLC. ("Empire"), licensee of Low-Power Television Station W17BM, Channel 17, Manhattan, New York, in support of its Comments regarding the Commission's *Sixth Further Notice of Proposed Rule Making* concerning the assignment of digital television (DTV) channels to existing television (NTSC) broadcast stations.

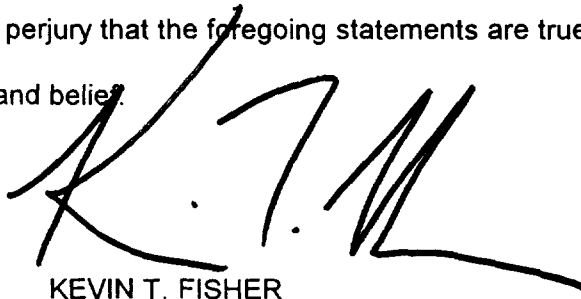
There are 9,225,119 people residing in 3,587,504 households within the W17BM Grade A contour. Of this number, 594,905 people are of Asian descent.

In its *Sixth Further Notice* the FCC proposes to assign a DTV channel to each of the existing full-power television stations. The Commission also proposes to pack DTV channels into a band between Channels 7 and 52, known as the core region, and ultimately reclaim Channels 2-6 and 52-69 following a transition period in which the full-service broadcasters will operate with both DTV and NTSC channels. In so doing, the Commission has not addressed the plight of LPTV facilities which undoubtedly will be displaced by future DTV facilities. As a result, Empire fully supports the comments, objections, and suggestions filed by the Community Broadcasters Association in this proceeding.

In the *Sixth Further Notice* the FCC proposed assigning DTV Channel 17 to WLIW, Garden City, New York. The WLIW transmitting facility is approximately 30 miles from that of W17BM. It is certain that the operation of W17BM would cause irreparable harm to the reception of DTV Channel 17 in New York City, and vice versa, meaning that W17BM would be subject to displacement at the least, and discontinuance of operation at the worst. Without the prospect of continued operation during the DTV

transition period, Empire objects to the assignment of DTV Channel 17 to WLIW. If another DTV channel within the core region cannot be found for WLIW, then Empire objects to the FCC's channel packing scheme and requests that one of the upper UHF channels be assigned as a DTV channel to WLIW.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.



Handwritten signature of Kevin T. Fisher, consisting of stylized initials 'K.T.F.' followed by a surname 'FISHER'.

KEVIN T. FISHER

November 18, 1996